

§ 1.382-7

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(ii) L ratably allocates its \$100,000 net operating loss and its \$150,000 of modified capital gain net income for the change year. \$40,000 of net operating loss ($\$100,000 \times (146/365)$) and \$60,000 of modified capital gain net income ($\$150,000 \times (146/365)$) are allocated to the pre-change period. \$60,000 of net operating loss ($\$100,000 \times (219/365)$) and \$90,000 of modified capital gain net income ($\$150,000 \times (219/365)$) are allocated to the post-change period.

(iii) Under paragraph (c)(2)(i) of this section, L uses its capital loss carryovers to offset modified capital gain net income. The capital loss carryovers offset the \$60,000 modified capital gain net income allocated to the pre-change period without limitation. Subject to the section 382 limitation, the remaining \$90,000 of capital loss carryovers offset the modified capital gain net income allocated to the post-change period. Accordingly, L uses \$60,000 of its capital loss carryovers to offset \$60,000 of its \$90,000 modified capital gain net income allocated to the post-change period. L has absorbed its entire section 382 limitation for the change year.

(iv) Under paragraph (c)(2)(ii) of this section, L's \$60,000 net operating loss allocated to the post-change period is offset by its remaining \$30,000 of post-change modified capital gain net income, reducing its post-change net operating loss to \$30,000.

(v) From its 1994 taxable year, L will carry over \$30,000 of capital loss and \$300,000 of net operating loss to its 1996 taxable year. From its 1995 taxable year, L will carry over \$70,000 of net operating loss (\$40,000 pre-change + \$30,000 post-change) to its 1996 taxable year. The \$40,000 pre-change portion of that carryover is subject to the section 382 limitation.

(g) *Definitions and nomenclature.* The terms and nomenclature used in this section and not otherwise defined herein have the same meanings as in sections 382 and 383 and the regulations thereunder. For purposes of this section:

(1) *Change year.* A loss corporation's taxable year that includes the change date is its *change year*.

(2) *Pre-change period.* The *pre-change period* is the portion of the change year ending on the close of the change date.

(3) *Post-change period.* The *post-change period* is the portion of the change year beginning with the day after the change date.

(4) *Modified capital gain net income.* A loss corporation's *modified capital gain net income* is the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges for the change year, deter-

mined by excluding any short-term capital losses under section 1212.

(h) *Effective date.* This section applies to ownership changes occurring on or after June 22, 1994.

[T.D. 8546, 59 FR 32080, June 22, 1994, as amended by T.D. 9264, 71 FR 30607, May 30, 2006; T.D. 9329, 72 FR 32808, June 14, 2007]

§ 1.382-7 Built-in gains and losses.

(a) *Treatment of prepaid income.* For purposes of section 382(h), prepaid income is not recognized built-in gain. The term *prepaid income* means any amount received prior to the change date that is attributable to performance occurring on or after the change date. Examples to which this paragraph (a) will apply include, but are not limited to, income received prior to the change date that is deferred under section 455, §1.451-5, or Rev. Proc. 2004-34 (2004-1 CB 991 (June 1, 2004)) (or any successor revenue procedure) (see §601.601(d)(2)(ii)(b)).

(b) *Effective/applicability dates.* This section applies to loss corporations that have undergone an ownership change on or after June 11, 2010. For loss corporations that have undergone an ownership change before June 11, 2010, see §1.382-7T as contained in 26 CFR part 1, revised April 1, 2009.

[T.D. 9487, 75 FR 33992, June 16, 2010]

§ 1.382-8 Controlled groups.

(a) *Introduction.* This section provides rules to adjust the value of a loss corporation that is a member of a controlled group of corporations on a change date so that the same value is not included more than once in computing the limitations under section 382 for the loss corporations that are members of the controlled group. In general, the adjustment is made under paragraph (c) of this section by reducing the value of the loss corporation by the value of the stock of each component member of the controlled group that the loss corporation owns immediately after the ownership change. The loss corporation's value may, however, be increased under paragraph (c) of this section by any amount of value that the other member elects to restore to the loss corporation.